



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

AUG 02 2012

Uniform Issue List: 408.03-00

T:EP:RA:TB

Legend

Taxpayer A:

IRA X:

Taxable Account Q:

Financial Institution A:

Amount M:

Physician S:

Institution N:

Dear

This is in response to your letter dated March 8, 2011, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A maintained an Individual Retirement Account (IRA), IRA X, with Financial Institution A. Taxpayer A asserts that, on June 24, 2009, Taxpayer A received a distribution of Amount M from IRA X. Taxpayer A asserts that her failure to accomplish a rollover of Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to her temporary use of the distributed funds to finance her move to a nursing home and the inability to replace Amount M from the sale of Taxpayer A's residence within the 60-day period.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, a widow living alone, fell and broke her shoulder in 2008 and also in 2008, according to her doctor, Physician S, began showing signs of mental impairment. Physician S recommended that Taxpayer A move to an assisted living institution, Institution N.

Only one time sensitive opportunity existed to secure a contract for care at Institution N due to the high cost of care and Taxpayer A's available financial resources. Taxpayer A's family put Taxpayer A's house on the market in order to finance the contract with Institution N.

On June 24, 2009, Amount M was withdrawn from IRA X to expedite Taxpayer A's move into Institution N on June 26, 2009. As represented by Taxpayer A's authorized representative during the conference of right held on July 10, 2012, due to Taxpayer A's mental condition the papers for the withdrawal were executed by Taxpayer A's son under a durable power of attorney, and Amount M was transferred directly to Institution N. Taxpayer A's family used these funds temporarily to secure a contract with Institution N and intended to return the funds to IRA X following the sale of Taxpayer A's residence.

The sale of Taxpayer A's residence occurred on September 9, 2009, after the 60-day period had expired. On or about the same date, the Amount M distribution from IRA X was returned to Taxpayer A's Account Q, a taxable account at Financial Institution A.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount M contained in section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup>

day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Internal Revenue Service (Service) will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected her ability to timely roll over Amount M of IRA X, or any portion thereof, to an IRA. Taxpayer A has stated that

the Amount M distribution from IRA X was used to secure an assisted living apartment and could not be returned to IRA X within 60-days because the sale of Taxpayer A's home took longer than the 60-day rollover period causing the failure of Taxpayer A to complete a rollover. In essence, Taxpayer A made a short term loan when she withdrew Amount M from IRA X and while she had the intent at the time of withdrawal to redeposit Amount M into IRA X prior to the expiration of the 60-day rollover period, she assumed the risk that Amount M might not be returned to her timely. Therefore, pursuant to section 408(d)(3)(I) of the Code, the Internal Revenue Service hereby declines to waive the 60-day rollover requirement with respect to the June 24, 2009, distribution to Taxpayer A of Amount M.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

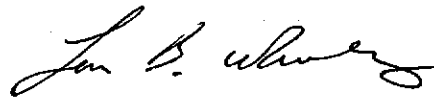
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose

cc